

46-45

**RICK WHITE**  
First District, Washington  
  
116 CANNON BUILDING  
WASHINGTON, DC 20515  
(202) 225-6311  
FAX (202) 225-3524

**COMMERCE COMMITTEE**

**SUBCOMMITTEES**

TELECOMMUNICATIONS,  
TRADE AND CONSUMER  
PROTECTION  
  
FINANCE AND HAZARDOUS  
MATERIALS  
  
ENERGY AND POWER

FOR LATE FILED



**Congress of the United States**  
**House of Representatives**

**DISTRICT OFFICES:**

21905 64TH AVENUE WEST  
SUITE 101  
MOUNTLAKE TERRACE, WA 98043  
425/640-0233  
FAX 425/776-7168

1050 NE HOSTMARK STREET  
SUITE 204  
POULSBRO, WA 98370  
360/697-3112

CALL TOLL FREE  
(800) 422-5521

**INTERNET**

repwhite@mail.house.gov  
<http://www.house.gov/white/>

April 8, 1998

The Honorable William Kennard  
The Honorable Susan Ness  
The Honorable Harold Furchtgott-Roth  
The Honorable Michael Powell  
The Honorable Gloria Tristani  
Federal Communications Commission  
1919 M Street NW  
Washington, DC 20554

**RECEIVED**

APR - 9 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Dear Chairman Kennard and Commissioners Ness, Furchtgott-Roth, Powell, and Tristani:

Having spent more than two years working to raise awareness of Internet issues in Congress, I would like to share my thoughts on the upcoming report the Commission must release pursuant to Section 623 of the FY1998 Commerce, Justice and State Appropriations Act. This report must include a review of the definitions included in the Telecommunications Act of 1996 and their impact on universal service.

The Telecommunications Act of 1996 included findings and definitions that should guide the Commission in this area. Internet services are "information services" and should not be burdened by regulations designed for other services. Attempts to parcel out specific pieces of Internet services, such as handset to handset Internet telephony or backbone provision, for disparate regulatory treatment will impede the development of the Internet. Simply put, the Internet's square peg should not be forced into the round hole of existing telecommunications regulations.

The Telecommunications Act provides clear instruction to the Commission as it responds to the questions posed by Congress. Section 230(b)(2), language I supported and defended in the conference committee on the Telecommunications Act, states that it is the policy of the United States, "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, *unfettered by Federal or State regulation.*" This language clearly shows that Congress did not believe regulation of the Internet is necessary or desirable.

The separate and distinct definitions of "telecommunications," "telecommunications services" and "information services" in the Telecommunications Act are not a new and unique framework of classifications for telecommunications related offerings. They are based on

No. of Copies rec'd  
LIBABODE

2

Federal Communications Commission

April 8, 1998

Page 2

definitions that have been used and developed over a long period of time. The information services definition is derived from the Modified Final Judgment in the AT&T divestiture case and closely tracks the "enhanced services" definition used by the Commission in its *Computer II* inquiry.

### **INTERNET TELEPHONY IS NOT A TELECOMMUNICATIONS SERVICE**

Under the definitions in the Act, Internet telephony is an information service rather than a telecommunications service. Because Internet telephony is not a telecommunications service, it should not be regulated like one.

The definition of telecommunications, "the transmission, between or among points specified by the user, information of a user's choosing, without changing the form or content of the information as sent and received," does not simply state that the information appears the same to the user, but that the information has undergone no change in form or content. For regulatory purposes, the critical distinction in the Act is not whether offerings appear to be "like" services to the end user, but whether they have undergone a change in form or content which may or may not be visible to the user. Internet services in general, by virtue of the use of the Internet Protocol, undergo a change in form or content.

Because Internet Protocol (IP) telephony from one handset to another has been cited as the leading example of a "like" service, I will take a moment to explain the change in form and content resulting from such technology. When a user places an IP call, the message is altered and information is added during the transmission process. The information is compressed, converted to IP code, and sent in packets across the worldwide network of networks. For applications such as email, the packets of information are stored on a destination server until a sufficient number of the packets arrive. If too many packets are lost, the message will be resent. However, in IP telephony the message can not be delayed, so intelligent guesses are made about the tones that should be included, and voice packets are synthesized to complete the message.

Internet telephony involves not only changes in form (breaking transmissions into packets and converting them), but changes in content as well (adding new estimated data to replace any that is lost in transmission). This is clearly not typical voice service, but a separate and distinct information service.

### **REGULATING INTERNET TELEPHONY WILL STIFLE INNOVATION AND UNDERMINE THE TELECOMMUNICATIONS ACT**

IP telephony creates the potential for multiple new uses in the future. I do not contemplate simple phone calls moving over the Internet, but phone calls with audio attachments and perhaps

video or graphical enclosures for those who have electronic devices capable of opening them. The opportunity is enormous.

However, we can still squander that opportunity if we look for ways to regulate parts of these innovative services with old models that block the development of new services. This would be a phenomenal mistake, halting the third largest driver of our economy and limiting the options available for consumers. This is exactly the opposite of the stated intention of the Telecommunications Act.

It is counterintuitive that Congress, in a sweepingly deregulatory Act, would seek to smother a competitive industry under layers of new obligations such as Section 214, tariff, or resale requirements or interstate access charges. Congress did not intend to place these obligations on a competitive, and previously unregulated, industry.

#### **"SELF-PROVISIONING" INTERNET SERVICE PROVIDERS SHOULD NOT PAY INTO THE UNIVERSAL SERVICE FUND**

To exploit the opportunities available from new technology, some Internet service providers may opt to develop their own infrastructure rather than purchase capacity from existing telecommunications service providers. An Internet service provider that wishes to provide services over its own network or backbone is still providing information services. Attempts to parcel out portions of the service under different regulatory regimes — including requiring payments to the Universal Service Fund for a portion the service — will stifle the benefits of innovation.

Further, such a scheme would be unworkable administratively. It would require the apportionment of "information service" revenues and "telecommunications service" revenues to assess universal service payments. This could, again, open the door to additional regulation (including under Title II), going well beyond the objective of universal service payments.

Finally, such an approach would discourage building the communications networks of the future. Internet service providers will hesitate to expanding bandwidth capability on their own if it means subjecting their businesses to excessive regulation. This could slow the provision of new technologies to consumers.

#### **REGULATORY FRAMEWORK FOR THE FUTURE OF THE INTERNET**

As you may know, I have introduced legislation to take the concept of a deregulated Internet envisioned in the Telecommunications Act one step further. My bill, H.R. 2372, the Internet Protection Act, creates a new regulatory model that is more appropriate for the competitive communications culture of the future. The bill blocks regulation of the Internet unless Congress finds it is needed, instead of making a regulatory framework designed to solve old

Federal Communications Commission

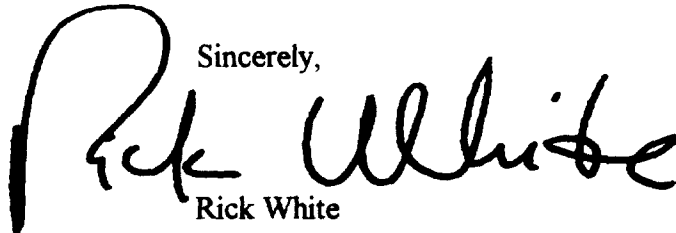
April 8, 1998

Page 4

problems fit this new medium. The bill also uses new competitive industries to expand competition in regulated fields, so that we unleash innovation instead of strangling it. While this is not the matter at hand, it is the harbinger of the future. I am interested to know your views on the bill.

As the Commission implements and enforces the Telecommunications Act, it should pay close attention to the plain language of the Act, as instructed by Congress when it commissioned the current study. The Commission has been charged with helping develop a deregulated, competitive communications system. It should be very careful not to impose a regulatory framework that is the legacy of a century-old telephone system on new, value added services that will drive tomorrow's economy.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick White". The signature is stylized, with a large, looping "R" and a cursive "White".

Rick White